

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 97 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

BHARAT VIJAY MILLS LTD

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Appearance:

Mr.Pranav G Desai for MR MANISH R BHATT for Petitioner  
NOTICE SERVED for the Respondent.

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 24/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal,  
Ahmedabad has referred the following question for the  
opinion of this Court under section 256(1) of the  
Income-tax Act, 1976.

"Whether the Tribunal is right in law in directing the ITO to allow the payment of Rs. 24,000/- made by the assessee in respect of the deferred annuity premium pertaining to two Managing Directors under section 37 of the Income-tax Act, 1961 ?"

2. The relevant assessment year is 1982-83.

The assessee, a resident industrial company engaged in textile industry and maintaining its accounts on mercantile system, with calender year as its previous year, claimed the deduction of Rs. 24,000/- on account of deferred annuity premium purchased in respect of its two Managing Directors Shri D B Patel and Shri A.P. Patel in the year under consideration. The ITO disallowed the assessee's claim on the ground that the payment of deferred annuity policy was merely a form of investment like setting apart certain funds for future use and as such the expenditure is not admissible under section 37 of the Act.

3. On appeal, however, the CIT (Appeals) following the Tribunal's order in the assessee's own case for the assessment year 1980-81, accepted the assessee's contention and allowed the deferred annuity premium paid by the assessee as a revenue deduction. In further appeal, the Tribunal upheld the order of the CIT (Appeals).

4. An identical question had arisen before this Court in Gujarat Steel Tubes Ltd. vs. CIT, reported in 210 ITR, 358 on which reliance is placed on behalf of the Revenue. In that matter, it was held that the premium paid in respect of the purchase of deferred annuity policy by the assessee company on the lives of the two Managing Directors thereof was not allowable under section 37 of the Act.

5. For the same reasons as are given in Gujarat Steel Tubes Ltd. (supra), and following the said decision, we hold that the Tribunal committed an error in directing the ITO to allow payment of Rs. 24,000/- made by the assessee in respect of deffered annuity premium pertaining to two Managing Directors under section 37 of the Act and the question referred to us is answered in the negative in favour of the Revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

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